reinsurer is only liable to indemnify his reinsured for the loss which he has actually incurred as a result of his legal liability; and not for the full amount of his legal liability if he has not had to pay the full amount.

Upon the question of fact I should have thought it was difficult for the plaintiffs to contend that they did not appreciate that the defendants were advising against an admission of liability, in the light of the letters which are referred to in para. 12 of the Defence. Nevertheless, Mr. Lee's son (who was sub-poenaed by the defendants) said that as a result of the several interviews which he had with Mr. Peek he did not know that they were repudiating liability. And when the letter dated the 8th August 1950 was put to him he agreed that in that letter the defendants appeared to be denying liability, but he said that at later interviews he "received a lot of encouragement from them." His father said that he did not know that the defendants were objecting upon the ground of Riot, until long after he had paid Bian Hoe's claim on 9th November. But in para. 2 of the letter dated 16th August Mr. Peek wrote :—

"We have made it clear that in view of the origin of this fire we do not consider that any liability rests on your or our policies (which did not include "Riot Damage")."

The unfortunate impression which Mr. Lee Leong Kee made by an answer which appears to be plainly at variance with the correspondence was not reduced by his denial of any recollection of a meeting which was held at his office on November 2nd. Immediately after this meeting Mr. Peek made a note of it, which is in evidence as Ex. 2. Mr. Lee's son remembers the meeting, and he remembers that one of the points raised was Riot. But although Mr. Lee's son is able to remember that the Riot point was raised he is unable to remember if any other points were raised at that meeting against liability being admitted. Am I then being asked to conclude that Ex. 2, which Mr. Peek made that same evening, was the product of Mr. Peek's imagination? The note says that misdescription; the rubber being within 25 feet; and many other such points were discussed; and it records that Mr. Peek agreed to make a memorandum setting out the various points for consideration. And in Ex. 3 we have the promised Memorandum, with a covering letter dated 9th November (the day on which the plaintiffs made the payment), which explains that the Memorandum "only outlines the basis on which a payment *ex gratia* COULD BE MADE by the plaintiffs *if they consider the client and connexion worth while.*" It concludes with the warning that if any payment is made the Memorandum is not to be taken as any indication that the defendants will make any contribution. Attached to this covering letter is a seven-page Memorandum. Mr. Lee Leong Kee says that he has never seen this Memorandum. His son says that he cannot recall having seen it. Mr. Tan Teow Quee says that he has never seen it, but that he received the letter dated 13th January 1951 in which Mr. Peek asked him to return the Memorandum; and he filed the letter without replying to it. Is it conceivable that Mr. Peek would have taken the trouble to write a seven-page Memorandum unless, at the meeting on November 2nd, he had urged upon the plaintiffs that they were under no liability to pay Bian Hoe, but that finding them anxious to pay "a client and connexion which was worth while," he was endeavouring to shew them how to do so on an *'ex gratia'* basis? I find as a fact that the plaintiffs made this payment without the consent of the defendants and contrary to their instructions.

At this stage I feel bound to refer to the evidence of Mr. Lee Leong Kee at the start of his cross-examination. It appears that the Chairman of the Board of the plaintiff company is Mr. Tan Boon Kak, who is a brother of Mr. Tan Lark Sye who is a Director of Aik Hoe, and that Mr. Tan Boon Kak and Mr. Tan Lark Sye are brothers of Mr. Tan Boon Chong who owns the Bian Hoe Co. I desire to say no more than that it appears to me that this is one of the factors which must be taken into consideration in determining whether the plaintiff company, in their readiness to pay the Bian Hoe Co., did so without the consent and contrary to the instructions of the defendant company; when (as I have held) the plaintiff company could properly have repudiated their liability to the Bian Hoe Co. upon four separate grounds.

There must be judgment for the defendants with costs.

Judgment for the defendants.

REGINA v. LOH AH CHENG.

[Cr. R. J. (Spenser Wilkinson, J.) February 13, 1953]

[Penang — Criminal Revision No. 2 of 1953]

Emergency Regulations 1951, regs. 4c and (12) — Jurisdiction of Sessions Court to try offences under reg. 4c(3) — Limitation of reg. 12 — Difference between "imprisonment of either description" and "penal servitude".

This was a criminal revision of a case in which the accused had been convicted and sentenced to 2 months rigorous imprisonment by a Sessions Court for an offence under reg. 4C(3) of the Emergency Regulations, 1951, which is punishable with penal servitude for life.

Under reg. 12, a Sessions Court is given jurisdiction to try any offence against these Regulations other than any offence punishable with death and to pass any sentence not exceeding 5 years imprisonment of either description or a fine of $5,000 or both.

Two of the important points raised by this Revision were: (a) whether the expression "imprisonment of either description" contained in reg. 12 could be construed as giving a Sessions Court jurisdiction to pass a sentence of imprisonment when the sentence allowed in reg. 4C(3) is penal servitude for life; (b) whether the expression "to try any offence.....other than any offence punishable with death" in the same Regulation conferred jurisdiction to try an offence punishable with penal servitude.

Held: (1), following **Public Prosecutor v. Lee Ah Sam**[1], the expression "imprisonment of either description" does not cover any term of penal servitude: Although there is no practical difference between rigorous imprisonment and penal servitude under the Prisons Regulations, there is nothing to prevent the policy of those Regulations being changed from time to time. The offences under reg. 4C are very serious offences which were added to the Emergency Regulations, 1948, in June 1950 and the use of the expression "imprisonment of either description" is a clear indication that reg. 12 does not contemplate offences which are not punishable with some term of imprisonment as an alternative to penal servitude; (2) from the history and intention of the Emergency Regulations, a limitation can be placed upon the general words "to try any offence" in reg. 12 so as to exclude offences punishable with penal servitude.

Cases referred to :—

(1) *Public Prosecutor v. Lee Ah Sam* (1949) M.L.J. 236.
(2) *Jay v. Johnstone* (1893) 1 Q.B. 25 at 28.
(3) *Greaves v. Tofield* 14 Ch. D. 563.
(4) *Webb v. Cutrim* (1907) A.C. 81 at 89.
(5) *Barlow v. Teal* 15 Q.B.D. 403.
(6) *Jones v. Mersey Docks* 11 H.L.C. 443 at 480.
(7) *Looker v. Halcomb* 4 Bing. 183 at 189.
(8) *Clayton v. Fenwick* (1856) 6 E. & B. 114.
(9) *Cox v. Hakes* 15 A.C. 506.

CRIMINAL REVISION.

C. M. Sheridan (Federal Counsel) for the Crown.

Accused in person.

Spenser Wilkinson, J. : —In this case there were three charges against the accused under Regulation 4C(3) of the Emergency Regulations, 1951 of supplying one sum of $2 and two sums of 50 cents to one Liew Chong Fatt whom he knew to be a terrorist. He was convicted upon all three charges and was sentenced to two months' rigorous imprisonment on each charge, the sentences to run consecutively.

The material part of the Regulation reads as follows :—

"4C(3). Any person who provides.....any supplies to any other person in circumstances which raise a reasonable presumption that such other person intends .....to act.....in a manner prejudicial to public safety.....shall be guilty of an offence and shall on conviction be liable to be punished with penal servitude for life."

I called for the record with a view to revision partly because *prima facie* a sentence of two months' rigorous imprisonment in respect of an offence punishable with penal servitude for life appeared to me to be rather lenient and also because I had doubts as to the legality of a sentence of rigorous imprisonment imposed in respect of an offence under a Regulation which provides penal servitude for life as the sole punishment, particularly in view of the decision of the Court of Appeal in the case of *Public Prosecutor v. Lee Ah Sam*[1], to which I shall refer again hereafter.

Jurisdiction is given to a Sessions Court to try certain offences under the Emergency Regulations, 1951 by Regulation 12 which reads as follows :—

"12. Without prejudice to the jurisdiction of the Supreme Court, a Sessions Court shall have jurisdiction to try any offence against these Regulations, other than any offence punishable with death, and to pass any sentence prescribed therefor not exceeding five years' imprisonment of either description or a fine of five thousand dollars or both such imprisonment and fine."

In construing this Regulation it is important at the outset to decide whether in the context the word "imprisonment" can be construed so as to include penal servitude. The word "imprisonment" by itself is capable of a wide variety of meanings. For example, in actions for false imprisonment it would include almost any form of detention. Again in section 19 of the Courts Ordinance, 1948 the word "imprisonment" has presumably been construed as including penal servitude, because otherwise there would be no appeal to the Court of Appeal in cases where a person was convicted by the High Court and sentenced to a term of penal servitude. In Regulation 12, however, the word "imprisonment" does not stand by itself, as it does, for example, in Regulations 5(1A), 6 and 6A(1); the phrase used is "imprisonment of either description". This is a phrase which occurs in section after section of the Penal Code and also in several places in the Criminal Procedure Code. It is quite clear that in the Penal Code the word "imprisonment" means rigorous imprisonment or simple imprisonment and does not include penal servitude, because these punishments are separately described in section 53. Moreover, in construing Regulation 12, it is necessary to bear in mind the provisions of paragraph (42) of section 2 of the Interpretation and General Clauses Ordinance, 1948 which lays down that unless there is something in the subject or context inconsistent with such construction "imprisonment" means imprisonment which may be either rigorous or simple. Indeed, the meaning of the

expression "imprisonment of either description" is in my opinion so well established in this country that it would need the addition of very plain words to give it a meaning different from that in the Penal Code.

Even apart from authority, therefore, I would be prepared to hold that in Regulation 12 the expression "imprisonment of either description" does not cover any term of penal servitude. The decision in the case of *Public Prosecutor v. Lee Ah Sam*[1] cited above appears to me to conclude the matter. That case decided :—

(a) That penal servitude and rigorous imprisonment are different penalties; and

(b) That upon the true construction of section 51 of the Interpretation and General Clauses Ordinance, 1948 when the penalty provided for any offence is penal servitude for life this is a maximum penalty and the offender can be sentenced to a lesser term of penal servitude — but such lesser sentence must be penal servitude and cannot be rigorous imprisonment.

In the light of this decision there appears to be either an ambiguity or an omission in Regulation 12 in that, if offences punishable with penal servitude only are to be tried by the Sessions Court, there is no indication as to what punishment that Court can impose in respect of such offences. In order to avoid this ambiguity or omission five possible constructions of Regulation 12 read with Regulation 4C have arisen for consideration, and I will deal with them *seriatim* :—

(1) The first interpretation must have been the one adopted by the Sessions Court in this case — that the expression "imprisonment of either description" in Regulation 12 includes penal servitude as to confer jurisdiction upon the Sessions Court to try offences under Regulation 4C(3) with power to impose a penalty of rigorous imprisonment up to five years. I think this interpretation is really disposed of by the meaning I have given to the expression "imprisonment" in the Regulation and its differentiation from penal servitude. It might be thought that the difference is academic and that there is now no practical difference between penal servitude and rigorous imprisonment because prisoners sentenced to these punishments, under the recent Prisons Regulations, appear to be treated exactly alike. I do not think it possible, however, to construe the provisions of the Emergency Regulations by reference to the Prisons Regulations. It is true that the Prisons Regulations are referred to in the judgment in Lee Ah Sam's[1] case, but those Regulations were not the basis of the decision. The basic difference between penal servitude and rigorous imprisonment derives in the Settlements from section 54 of the Prisons Ordinance and in the Malay States from section 59 of the Prisons Enactment. Under those sections rigorous imprisonment must be imprisonment with hard labour, whilst penal servitude is imprisonment with labour which may be hard. So that a difference between penal servitude and rigorous imprisonment will or will not exist from time to time according as hard labour or otherwise is prescribed in respect of penal servitude by the Prisons Regulations. There is nothing to prevent the policy of those Regulations being changed from time to time. Thus a prisoner might to-day be sentenced to a term of ten years' rigorous imprisonment and under the present Regulations it may well be that the labour he is called upon to do is no harder than it would have been had he been sentenced to penal servitude. If, however, in later years the Prisons Regulations were amended so as to make the labour under penal servitude much lighter then the labour under rigorous imprisonment the prisoner who had been unlawfully sentenced to rigorous imprisonment instead of penal servitude would have good grounds for complaint and the illegality of the sentence would immediately become apparent.

(2) The next suggestion is that the Sessions Court has been given jurisdiction to try offences under Regulation 4C(3) but that the Legislature has omitted to provide any powers of punishment so that it is a case of imperfect jurisdiction. This interpretation appeared to me at first sight to have its attractions; but for the reasons which I will set out in discussing the next possible interpretation I have come to the conclusion that it is not the true interpretation of the Regulation.

(3) Another possible solution is that the Sessions Court has jurisdiction to try these offences and, that because penal servitude and rigorous imprisonment are, in practice, almost identical the Sessions Court can impose a penalty not greater than five years' penal servitude. If this view were correct I might have power to alter the existing sentence from rigorous imprisonment to penal servitude. But this construction appears to me to be in direct conflict with the Court of Appeal decision above referred to. It having been laid down that the punishments are different it is impossible to decide what term of penal servitude "does not exceed" five years' rigorous imprisonment. Not only am I bound by that decision (with which I respectfully agree) but also I think it is clear that the Legislature must be deemed, when they re-enacted Regulation 12 in 1951, to have been aware of that interpretation and to have adopted it. As Lord Coleridge, C.J. said in **Jay v. Johnstone**[2]:

> "There is a well-known principle of construction sanctioned, if sanction were necessary, by the decision of the Court of Appeal in **Greaves v. Tofield**[3], that where the Legislature uses in an Act a legal term which has received judicial interpretation it must be assumed that the term is used in the sense in which it has been judicially interpreted."

Further authority for the same proposition is to be found in **Webb v. Outrim**[4]; **Barlow v. Teal**[5]; **Jones v. Mersey Docks**[6].

(4) Another possibility is that the Sessions Court has jurisdiction to try offences under Regulation 4C(3) and to impose any term of penal servitude even to the extent of penal servitude for life. Upon this view because the limitation of five years contained in Regulation 12 refers only to offences punishable with imprisonment it cannot apply to offences punishable with penal servitude; and as the Regulation says that the Sessions Court can try "any offence against these Regulations other than offences punishable with death" one might say that by necessary implication there must be power to punish; and in the absence of any limitation the power must be to punish with the full penalty laid down by the Regulation in question. The main objection to this construction is that such a drastic increase in the jurisdiction of the Subordinate Courts would require very plain words in the Statute to bring it about, and I cannot believe that the Legislature by the words it has, in fact, used can have intended this startling result. A second objection to this construction is that what at first sight appears to be a limitation is, in fact, not a limitation but an extension of jurisdiction. Apart from the Emergency Regulations the powers of a Sessions Court to punish are limited by section 64 of the Courts Ordinance to a maximum of three years' rigorous imprisonment. Regulation 12 deliberately increases this maximum in cases triable under the Regulations by the Sessions Court to five years, but I do not think it can fairly be construed to go any further. For these reasons I am not prepared to adopt this construction.

(5) I come now to the construction which in my opinion is the true construction of the Regulations read as a whole — it is that the Legislature did not intend to give and has not given to the Sessions Court any jurisdiction to try offences under Regulation 4C(3). In the first place I think the use of the expression "imprisonment of either description" is a clear indication

that Regulation 12 does not contemplate offences which are not punishable with some term of imprisonment as an alternative to penal servitude. Regulation 4C, which was added to the Emergency Regulations, 1948 in June 1950, created new offences which the Legislature clearly considered to be of a very serious nature — those under Sub-Regulation (1) are punishable with death and those under Sub-Regulations (2) and (3) are punishable with penal servitude for life without any alternative. Prima facie, therefore, when these new offences were framed the intention was that the offenders should be tried in the High Court and that in the Settlements the trial should be by jury.

This view appears to me to find further support from a consideration of the history of the Regulations. In the Emergency Regulations, 1948 Regulation 32 reads as follows:—

"32. Without prejudice to the jurisdiction of the Supreme Court, a District Court shall have jurisdiction to try any offence against these Regulations, other than offences punishable with death, and to pass any sentence allowed not exceeding five years' imprisonment of either description or a fine of five thousand dollars or both such imprisonment and fine."

That Regulation was already in existence when Regulation 4C was first added in June, 1951. There was, therefore, no question before that addition of a Subordinate Court trying offences under Regulation 4C, because up till then there were no offences under the Regulations which were not punishable with death or with imprisonment. When the Regulations were revised and re-enacted as the Emergency Regulations 1951 the present Regulation 12 took the place of the old Regulation 32 and only two changes were made: the first was the substitution of the words "Sessions Court" for the words "District Court"; and the second was the substitution of the words "prescribed therefor" for the word "allowed". I think it is clear that this second alteration was merely intended to be an improvement in phraseology and made no substantial change in the law. The first change was, of course, made before the District Court had ceased to exist and there were doubts as to whether the provisions of the Courts Ordinance were sufficient to transfer jurisdiction which had been in the District Court to the Sessions Court. It would have been very easy when re-enacting the old Regulation 32 either to amend it by inserting a reference to penal servitude, or to amend Regulation 4C(2) and (3) either by giving an alternative power to punish by imprisonment, thus bringing the wording of the Regulation into line with the common form used in the Penal Code, or simply by making the maximum punishment imprisonment for life — a punishment which, I believe, is at present unknown to the law in this country. The deliberate omission to make any such change is a further indication that it was not within the contemplation of the draftsman of the Regulations that these new offences, which had been specially made punishable with penal servitude for life, should be tried by a Sessions Court. Indeed, the use of the words "be liable to be punished with penal servitude for life", the meaning of which had so recently been laid down by the Court of Appeal, is a very clear indication that the offences were intended to be tried in the High Court and that a term of penal servitude should be imposed in every case. I think it is only because conditions have recently changed, so that certain acts which are technically offences against Regulation 4C(2) and (3) are now looked upon as comparatively trivial offences, that the idea of trying them in the Sessions Court has arisen.

There is a further consideration which confirms me in the view which I have indicated. The Legislature must be well aware that in the Settlements all criminal trials by the High Court are trials by jury. It has long been held that an Act of Parliament which purports to take away the right of trial by jury ought to receive the strictest construction. (*Looker v. Halcomb*[7], per Best, C.J.). I feel sure that had the intention been to make these offences which are punishable solely with penal servitude triable by the Sessions Court express words would have been used for this purpose.

The only difficulty in the way of adopting this construction is the phrase "shall have jurisdiction to try any offence against these Regulations other than any offence punishable with death". These words are very wide and the question arises whether the context is sufficiently clear to justify placing some limitation upon them. Then following passage from *Craies on Statute Law* (5th edition p. 172) is relevant on this point:—

"Although it often happens that the words used in a statute are, as Coleridge, J. observed in Clayton v. Fenwick[8], 'so general that they must receive some limitation', it is difficult, as the following cases will show, to lay down any general rule for arriving at the intention of the Legislature as to the precise limitation which must be put upon the meaning of general words used in a statute."

The author then cites *inter alia Cox v. Hakes*[9] as authority for the proposition that "In cases where some limitation is called for the Court may be influenced by the history, the mischief or the intention of the statute" (see per Lord Halsbury at pp. 517, 518). The history of the Regulations, which I have outlined above, indicates, in my opinion, that up to the 4th June, 1951 when various offences punishable with penal servitude only were added, the intention was that Subordinate Courts should have jurisdiction to try emergency offences punishable with ten years' rigorous imprisonment. There has been no change in the wording of Regulation 12 to suggest any change of intention of the Regulations must be presumed to remain what it was before

Regulation 4C was added. I conclude, therefore, that in their context the general words "any offence against these Regulations" must be so limited as to exclude offences punishable with penal servitude only.

For these reasons I have come to the conclusion that the Sessions Court has no jurisdiction to try offences under Regulation 4C(3) I have given very earnest consideration to this question and have set out my reasons at some length because as far as I can see my decision on the point is final. In my opinion the determination of this revision has involved a point which it would be desirable in the public interest to have determined by the Court of Appeal under section 34 of the Courts Ordinance, 1948. Unfortunately, however, that section makes no mention of revision, and I know of no means of bringing a decision of the High Court made on revision before the Court of Appeal. In view of the very wide powers of revision given to the High Court by the Courts Ordinance, 1948 it is a curious anomaly that decisions on appeal to the High Court can be referred to the Court of Appeal whilst decisions on revision are final. In my experience the questions which arise on revision are often points of very considerable importance which are not raised by way of appeal because the persons affected have been unrepresented. The inconveniences, not to say the dangers, of the present situation are, I think, obvious and it appears to me that an amendment of the law to remove this anomaly is highly desirable.

The result of my decision is that the purported convictions and sentences in this case must be set aside and the case remitted to the Sessions Court either for a fresh trial upon an offence within its jurisdiction or for preliminary enquiry to be held.

Convictions and sentences set aside.
Case remitted to Sessions Court.

EUSOF ALI & ANOR. v. NYONYA LEE GAIK HOOI.

[A. C. J. (Briggs, J.) March 24, 1952]

[Alor Star — Civil Appeal No. 29 of 1951]

Landlord and tenant — Assignment of monthly tenancy.

The question in this appeal was whether a parole monthly tenancy could be legally assigned. The learned President who tried the case held that it could not be legally assigned.

Held: the assignment in this case was valid to transfer the benefit of the monthly tenancy.

Cases referred to:—

(1) *Lee Thin Pung v. Lim Seang Kee & Anor.*, noted in (1949) M.L.J. 69.
(2) *Bradley v. Baylis, etc.* 8 Q.B.D. 195.
(3) *Ness v. Stephenson* 9 Q.B.D. 245.
(4) *Loke Yung Hong v. Shanghai Furniture Co. & Anor.* (1948) M.L.J. 136.
(5) *Elliott v. Johnson* (1866) L.R. 2 Q.B. 120.
(6) *Allcock v. Moorhouse* 9 Q.B.D. 366.
(7) *Tolhurst v. Associated Portland Cement Manufacturers (1900) Ltd.* (1902) 2 K.B. 660.
(8) *Liversidge v. Broadbent* (1859) 4 H. & N. 603.
(9) *Lampleigh v. Brathwait* 1 Sm. L.C. 10th ed. p. 136.
(10) *Arakans Smelting Co. v. Belden Co.* 127 U.S. 379, 387.
(11) *Humble v. Hunter* (1848) 12 Q.B. 310, at 317.

CIVIL APPEAL.

I. K. Meek for the appellants.
James Taylor for the respondent.

Cur. Adv. Vult.

Briggs, J. : — This appeal is from the decision of the learned President of the Sessions Court, Alor Star, on two consolidated suits, Nos. 69 and 132 of 1950. The respondent is the owner of a shop house, No. 27 Jalan Pekan Malayu, Alor Star, of which at all material times prior to 1943 one Gulam Ali was the tenant on a parole monthly tenancy at a rent of $75 per month. Whether by assignment or novation of contract, or without any change of the legal status of Gulam Ali, the premises were in 1944 in the *de facto* possession of one Kurban Hussein. He was in partnership with the first appellant, and his tenancy or other rights in the premises belonged beneficially to the partnership. The firm name was "H. Kurban Hussein", of which the initial "H" refers to the first appellant. The partnership was dissolved on 27th April, 1949, and the assets, including all Kurban Hussein's rights in respect of the premises, were taken over by the first appellant. I have no doubt that those rights were assigned in equity, if not in law, at that time, so far as was possible.

The respondent claimed at first to have had no notice of any of these changes when they took place. She pleaded that she had accepted Kurban Hussein as tenant, but only temporarily and on the express terms that he would within a short period hand back possession to Gulam Ali, who had gone to India, but was expected to return. How Gulam Ali could have